

Notice of Allowability

Application No.

09/884,791

Examiner

Patrick L Edwards

Applicant(s)

KURTZ ET AL

Art Unit

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 07-29-2004.
2. ☒ The allowed claim(s) is/are 1-28 and 30-45.
3. ☒ The drawings filed on 29 July 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 07-29-2004
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

LEO BOUDREAU
SUPERVISORY PATENT EXAMINER

Art Unit: 2621

DETAILED ACTION

Response to Arguments

1. The applicant's arguments, filed on July 29, 2004, have been fully considered. A response to these arguments is provided below.

Information Disclosure Statement

Summary of Argument: In the previous action, the examiner requested European Patent No. 0 196 662. The examiner also requested a copy of the article by Horst Ebel entitled "Crystallite Size Distributions from Intensities of Diffraction Spots".

Applicant has provided the requested documents.

Drawing Objections

Summary of Argument: In the previous action, the examiner objected to Figures 1A and 1B under 37 CFR § 1.84(p)(5) because they included reference character "14", which was not mentioned in the specification.

Applicant has amended the instant specification to provide description for reference numeral 14.

In the previous action, the examiner indicated that Figures 2, 9, and 10 should be designated by a legend such as "prior art", because only that which is old is illustrated.

Applicant has amended these drawings accordingly.

Specification

Summary of Argument: Applicant has amended the specification to update the status of application no. 09/365,063.

Claim Objections

Summary of Argument: In the previous action, the examiner objected to claims 1-43 because of the incorrect numbering of the claims. Applicant has renumbered the claims accordingly.

37 CFR 1.75 Claim Objections

Summary of Argument: In the previous action, claims 5 and 28 were rejected under 37 CFR § 1.75(a). Applicant has amended these claims and argues that the claim rejection should be withdrawn.

Examiner's Response: The examiner agrees. The objections to claims 5 and 28 under 37 CFR § 1.75(a) are hereby withdrawn.

Art Unit: 2621

35 USC 112, Second Paragraph Rejections

Summary of Argument: In the previous action, claims 31 and 36-38 were rejected because of an indefinite claim dependency. Applicant has renumbered the claims and argues that the claims are now compliant.

Examiner's Response: The examiner agrees. The rejection to claims 31 and 36-38 are hereby withdrawn.

Prior Art Rejections

Summary of Argument: Applicant has amended claim 24 to incorporate all of the limitation of claim 29. Applicant argues that this amendment overcomes the double patenting rejection from the previous office action.

Examiner's Response: The examiner agrees. The double patenting rejections are hereby withdrawn.

Allowable Subject Matter

2. Claims 1-28 and 30-45 are allowed.
3. The reasons for allowance were provided in the previous office action and will not be repeated herein.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick L Edwards whose telephone number is (703) 305-6301. The examiner can normally be reached on 8:30am - 5:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Boudreau can be reached on (703) 305-4706. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

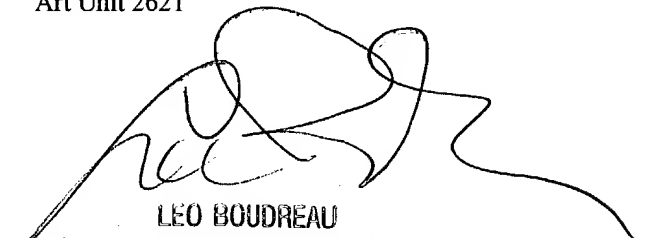
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patrick L Edwards

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Art Unit 2621



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